

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
MAR 29 PM 12:53

THOMAS J. MCNAMARA,
Plaintiff

v.

MASSACHUSETTS WATER RESOURCES
AUTHORITY, LEROY WALKER, PETER
YARROSI, CAROLYN FIORE, VICTOR
L'ESPERANCE and KAREN BAILEY,
Individually and in their capacities as Agents
Of the Massachusetts Water Resources
Authority,
Defendants

C.A. NO. 041035BWG4

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT¹

Pursuant to Fed. R. Civ. P. 12(b)(6), the Defendants, Massachusetts Water Resources Authority (the MWRA), Leroy Walker (Walker), Peter Yarrosi (Yarossi), Carolyn Fiore (Fiore), Victor L'Esperance (L'Esperance) and Karen Bailey (Bailey), (hereinafter "the Defendants") move this Honorable Court to dismiss various counts of the plaintiff's complaint for failure to state a claim upon which relief can be granted.

As grounds in support of this motion the defendants state:

1. The plaintiff filed this action on December 3, 2003, in the Lowell Superior Court. On February 23, 2004, the defendants timely removed this action to the United States District Court for the District of Massachusetts.²

¹ The four (4) Motions to Dismiss filed by the Defendants do not dispose of the entire Complaint. The four (4) Motions are set out below in the body of the Motion.

² The defendants were not served with the Complaint until January 26, 2004.

2. Plaintiff alleges he was discriminated against by the MWRA and its managers and/or supervisors because he filed a discrimination complaint with the U.S. Department of Labor, Office of Federal Contract Compliance ("OFCCP") after the MWRA failed to accommodate his disability, which he identified as Post Traumatic Stress Disorder. Despite the fact plaintiff was ultimately given a reasonable accommodation by the MWRA, he alleges he was retaliated against by the MWRA because he filed this complaint.

3. The Complaint sets forth eight (8) claims against the six (6) defendants.

4. There are four (4) Motions to Dismiss presented to the Court for consideration. They are as follows:

Motion of the individual Defendants (Walker, Yarossi, Fiore, L'Esperance and Bailey) to dismiss Count I of the Complaint alleging Disability Discrimination, on the grounds that M.G.L. c. 151B(16) does not provide a cause of action for individual liability.

Motion of Defendant Bailey to Dismiss the Plaintiff's Complaint in its entirety, on the grounds that Bailey held no supervisory role with respect to plaintiff, and the Complaint is otherwise devoid of any facts giving rise to liability against her.

Motion of Defendants' Yarossi and Fiore's to Dismiss the Complaint in its entirety for failure to articulate any specific facts to support any claim against them.

Motion of Defendants' to Dismiss Counts III, IV, V and VI of the Complaint. Counts III and IV were never raised by the plaintiff in his original Charge filed with the MCAD, thus he has failed to exhaust his administrative remedies with respect to these

counts. Count V, alleging Intentional Infliction of Emotional Distress is barred by the exclusivity provision of the Massachusetts Worker's Compensation statute. Count VI should also be dismissed as to all defendants since none of the defendants uttered or repeated any defamatory statement about the plaintiff.

In further support of this motion, the Defendants attach the Memorandum of Law In Support of Defendants' Motions to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12 (b)(6).

WHEREFORE, for the foregoing reasons as well as those set forth in the accompanying Memorandum of Law, the MWRA respectfully requests that the Court dismiss the plaintiff's complaint as set forth in each motion.

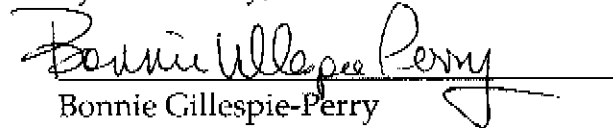
REQUEST FOR A HEARING

The defendants respectfully request a hearing on the foregoing Motion and its accompanying Memorandum of Law.

Respectfully Submitted,

MASSACHUSETTS WATER
RESOURCES AUTHORITY,
Defendant

By its attorney,



Bonnie Gillespie-Perry
(BBO #554747)
Senior Staff Counsel
Massachusetts Water Resources
Authority
Charlestown Navy Yard
100 First Avenue
Boston, MA 02129
(617) 788-1181

Dated: March 29, 2004

CERTIFICATE OF SERVICE

I, Bonnie Gillespie-Perry, hereby certify that on 29th day of March, 2004, I served the foregoing Defendants' Motion to Dismiss Plaintiff's Complaint by causing a copy to be sent by first class mail to:

Gary G. Nolan, Esq.
Nolan Perroni LLP
133 Merrimack Street
Lowell, Massachusetts 01852



Bonnie Gillespie-Perry